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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,045	11/17/2003	Christopher Albright	244209US67	1151

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EXAMINER

SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/713,045

Applicant(s)

ALBRIGHT, CHRISTOPHER

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4, 12 and 18 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-9, 13-17, 22 and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 6 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant amended claim 6 to depend from claim 1, rather than claim 5, eliminating the antecedent basis for "the range".

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5-9, 13-17 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 985 342. Regarding claim 1, EP '342 discloses a mixing apparatus for mixing livestock feed, said apparatus comprising a container (1) for the reception of feed; said container including a floor (6), a wall extending away from the floor, the arrangement being such that substantially all of said wall is disposed above the floor, said wall defining a top opening remote from the floor, said floor and said wall defining an enclosure (see Fig. 1); a discharge opening (51) in said wall; and an auger (2,3) disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor, said wall further including a first side (right side in Fig. 1) and a second side (left side in Fig. 1) positioned on opposing sides of the enclosure, said sides being disposed at dissimilar angles to said floor (see Fig. 1).

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Regarding claim 2, said first side is substantially vertical relative to the floor (see Fig. 1).

Regarding claim 3, said first side and said second side are not symmetrical (see Fig. 1).

Regarding claims 5 and 6, an absolute value of a difference between the angles of the first and second sides comprise a range of 15 to 25 degrees (see Fig. 1). Regarding claim 7, EP '342 discloses a mixing apparatus for mixing livestock feed, said apparatus comprising a container (1) for the reception of feed; said container including a floor (6), a wall extending away from the floor, the arrangement being such that substantially all of said wall is disposed above the floor, said wall defining a top opening remote from the floor, said floor and said wall defining an enclosure (see Fig. 1); a discharge opening (51) in said wall; and an auger (2,3) disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor, said wall further including a first end (the right side in Fig. 2) and second end (the left side in Fig. 2) positioned on opposing sides of the enclosure, said wall further including a first side (right side in Fig. 1) and a second side (left side in Fig. 1) positioned on opposing sides of the enclosure, a first angle between said second side and said axis being greater than a second angle between said first side and said axis (see Fig. 1). Regarding claim 8, said first side is disposed substantially vertical relative to the floor (see Fig. 1).

Regarding claim 9, said first side and said second side are not symmetrical (see Fig. 1).

Regarding claims 13 and 14, an absolute value of a difference between the angles of the first and second sides comprise a range of 15 to 25 degrees (see Fig. 1).

Regarding claim 15, EP '342 discloses a mixing apparatus for mixing livestock feed, said apparatus comprising a container (1) for the reception of feed; said container

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including a floor (6), a wall extending away from the floor, the arrangement being such that substantially all of said wall is disposed above the floor, said wall defining a top opening remote from the floor, said floor and said wall defining an enclosure (see Fig. 1); an auger (2,3) disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor, said wall further including a first side (right side in Fig. 1) and a second side (left side in Fig. 1) positioned on opposing sides of the enclosure, the distance between said axis of rotation and an upper part of said first side wall being shorter than the distance between said axis of rotation and an upper part of said second side of said wall. Regarding claim 16, said first side is disposed substantially vertical relative to said floor (see Fig. 1). Regarding claim 17, said first side and said second side are not symmetrical (see Fig. 1). Regarding claim 25-27, the first side is vertical (see Fig. 1).

4. Claims 15, 16 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 779 027. Regarding claim 15, EP '027 discloses a mixing apparatus for mixing livestock feed, said apparatus comprising a container (8) for the reception of feed; said container including a floor (9), a wall (11) extending away from the floor, the arrangement being such that substantially all of said wall is disposed above the floor, said wall defining a top opening remote from the floor, said floor and said wall defining an enclosure (see Fig. 1-3); an auger (2,3) disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor, said wall further including a first side (right side in Fig. 3) and a second side (left side in Fig. 3) positioned on opposing sides of the enclosure, the distance between said axis of

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rotation an upper part of said first side wall being shorter than the distance between said axis of rotation and an upper part of said second side of said wall. Regarding claims 16 and 27, said first side is disposed substantially vertical relative to said floor (see Fig. 3).

5. Claims 15, 16, 22 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Wosmek (US 2,894,733). Regarding claim 15, Wosmek ('733) discloses a mixing apparatus for mixing livestock feed, said apparatus comprising a container (12) for the reception of feed; said container including a floor (16), a wall extending away from the floor, the arrangement being such that substantially all of said wall is disposed above the floor, said wall defining a top opening remote from the floor, said floor and said wall defining an enclosure (see Figs. 1 and 2); an auger (23) disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor, said wall further including a first side (right side in Fig. 2) and a second side (left side in Fig. 2) positioned on opposing sides of the enclosure, the distance between said axis of rotation an upper part of said first side wall being shorter than the distance between said axis of rotation and an upper part of said second side of said wall. Regarding claims 16 and 27, said first side is disposed substantially vertical relative to said floor (see Figs. 1 and 2). Regarding claim 22, a discharge opening is located in the second side (see Fig. 2).

Allowable Subject Matter

6. Claims 4, 12 and 18 allowed.

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7. Claims 10, 11, 20, 21, 23 and 24 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments are moot in view of the new grounds of rejection and indication of allowable subject matter.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David L. Sorkin
Primary Examiner
Art Unit 1723

DLS